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20PR-CC00029 - MARSHALL S KILBURN V AUTOSPORT ACQUISITIONS, ET AL (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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Sort Date Entries: ☒ Descending ☐ Ascending

Display Options:

- 09/28/2020 Motion for Change of Venue**
 Application for Change of Venue As a Matter of Right.
Filed By: MATTHEW GLENN
On Behalf Of: MARSHALL SCOTT KILBURN
- 09/24/2020 Family Member/Roommate Served**
 Document ID - 20-SMOS-69; Served To - SUHANICH, TIMOTHY M; Server - MONROE COUNTY WISCONSIN SHERIFF; Served Date - 17-SEP-20; Served Time - 13:40:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - Left with Tiffany Schanich
Notice of Service
 Return of Summons - Timothy Suhanich.
Filed By: MATTHEW GLENN
On Behalf Of: MARSHALL SCOTT KILBURN
- 09/10/2020 Summons Issued-Circuit**
 Document ID: 20-SMOS-69, for SUHANICH, TIMOTHY M.
Summons Issued-Circuit
 Document ID: 20-SMOS-68, for AUTOSPORT ACQUISITIONS, LLC.
Case Review Scheduled
Scheduled For: 12/11/2020; 9:00 AM ; BENJAMIN FREDERICK LEWIS; Perry
- 09/04/2020 Filing Info Sheet eFiling**
Filed By: MATTHEW GLENN
Confidential Address Filed
 Confidential Case Filing Information Sheet - Non-Domestic Relations.
Filed By: MATTHEW GLENN
On Behalf Of: MARSHALL SCOTT KILBURN
Pet Filed in Circuit Ct
 Petition for Damages.
Filed By: MATTHEW GLENN
Judge Assigned Ex. A

IN THE CIRCUIT COURT OF PERRY COUNTY, MISSOURI

MARSHALL KILBURN,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
AUTOSPORT ACQUISITIONS, LLC,)	JURY TRIAL DEMANDED
Serve: Registered Agent)	
Jacob Spirer)	
2349 South Avenue)	
La Crosse WI 54601)	
)	
and)	
)	
TIMOTHY SUHANICH,)	
10375 Harmony)	
Sparta WI 54656)	
)	
Defendants.)	

PETITION FOR DAMAGES

COMES NOW, Plaintiff, Marshall Kilburn, by and through his counsel, Cook, Barkett, Ponder, & Wolz, L.C., and for his cause of action against Defendants Autosport Acquisitions, LLC and Timothy Suhanich, states and alleges as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times relevant hereto, Plaintiff was a citizen and resident of Cape Girardeau County, Missouri.
2. At all times relevant hereto, Defendant Autosport Acquisitions, LLC was a business incorporated in the state of Wisconsin and was authorized to conduct business as a common carrier nationwide.
3. At all times relevant hereto, Defendant Timothy Suhanich (hereinafter "Defendant Suhanich") was a citizen and resident of the State of Wisconsin.

4. Venue and jurisdiction are proper in this court pursuant to R.S.Mo 508.010 in that this action arises from conduct which occurred in Perry County, Missouri.
5. At all times relevant hereto, Defendant Suhanich was acting as an agent and/or employee within the course and scope of his employment with Defendant Autosport Acquisitions.
6. On or about November 25, 2019, Defendant Suhanich was operating a truck owned by Autosport Acquisitions in a southerly direction on U.S. Highway 55.
7. On or about November 25, 2019, Plaintiff was lawfully stopped on the shoulder of Highway 55 to make vehicle repairs.
8. At all times herein, plaintiff remained off the drivable portion of Highway 55.
9. On or about November 25, 2019, Defendant Suhanich, in a careless and imprudent manner, drove his vehicle off the main travel portion of U.S. Highway 55 where it struck Plaintiff Kilburn.
10. On or about November 25, 2019, Defendant Suhanich was operating his vehicle without a driver's license.
11. After the accident, Defendant Suhanich left the scene without giving his name, address, or other relevant information to the appropriate authorities.

COUNT I

NEGLIGENCE – DEFENDANT AUTOSPORT ACQUISITIONS, LLC.

12. To the extent they are not inconsistent with this Count, Plaintiff incorporates the allegations in paragraphs 1-9 as if fully set forth herein.
13. At all times relevant hereto, Defendant Suhanich was acting as an agent and/or employee within the course and scope of his employment with Defendant Autosport Acquisitions.

14. In colliding with Plaintiff's vehicle, Defendant Suhanich operated Defendant Autosport Acquisitions' vehicle negligently in one or more of the following respects:

- a. Failed to exercise the highest degree of care to keep a careful lookout so as to discover Plaintiff prior to the collision;
- b. Allowed his vehicle to leave the drivable portion of the roadway where it struck Plaintiff;
- c. Drove too fast for the conditions.

15. As a direct and proximate result of the negligence of Defendant Autosport Acquisitions, Plaintiff suffered injuries to his right and left legs, skull, neck and back.

16. As a direct and proximate result of the negligence of Defendant Autosport Acquisitions, Plaintiff suffered past and future medical expenses and past and future pain and suffering and loss of enjoyment of life.

WHEREFORE, Plaintiff Marshall Kilburn prays for judgment against Defendant Autosport Acquisitions, LLC, for such sums as are fair and reasonable in an amount in excess of \$25,000, together with any and all costs incurred, and for such other relief as the Court may deem just and proper.

COUNT II

NEGLIGENCE – TIMOTHY SUHANICH

17. To the extent they are not inconsistent with this Count, Plaintiff incorporates the allegations in paragraphs 1-14 as if fully set forth herein.

18. At all times relevant hereto, Defendant Suhanich was acting as an agent and/or employee within the course and scope of his employment with Defendant Autosport Acquisitions.

19. In colliding with Plaintiff's vehicle, Defendant Suhanich operated Defendant Autosport Acquisitions vehicle negligently in one or more of the following respects:

- a. Failed to exercise the highest degree of care to keep a careful lookout so as to discover Plaintiff prior to the collision;
- b. Allowed his vehicle to leave the drivable portion of the roadway where it struck Plaintiff;
- c. Drove too fast for the conditions.

20. As a direct and proximate result of the negligence of Defendant Suhanich, Plaintiff suffered injuries to his right and left legs, skull, neck and back.

21. As a direct and proximate result of the negligence of Defendant Suhanich, Plaintiff suffered past and future medical expenses and past and future pain and suffering and loss of enjoyment of life.

WHEREFORE, Plaintiff Marshall Kilburn prays for judgment against Defendant Timothy Suhanich, for such sums as are fair and reasonable in an amount in excess of \$25,000, together with any and all costs incurred, and for such other relief as the Court may deem just and proper.

COUNT III

PUNITIVE DAMAGES--SUHANICH

22. To the extent they are not inconsistent with this Count, Plaintiff incorporates the allegations in paragraphs 1-20 as if fully set forth herein.

23. The actions described above taken by Defendant Suhanich were reckless, willful and wanton, and done with complete disregard for human safety.

24. As a direct and proximate result of the negligence of Defendant Suhanich, Plaintiff suffered injuries to his right and left legs, skull, neck and back.

25. As a direct and proximate result of the negligence of Defendant Suhanich, Plaintiff suffered past and future medical expenses and past and future pain and suffering and loss of enjoyment of life.

WHEREFORE, Plaintiff prays for judgment against the Defendant Suhanich for punitive damages in such and amount as will serve to punish the Defendant and for his reckless, willful and wanton conduct and deter Defendant and others from similar conduct in the future, which sum is in excess of 3 million dollars (\$3,000,000.00), for her costs expended herein, and for such other and further relief as the Court deems necessary and proper.

COUNT IV

PUNITIVE DAMAGES—AUTOSPORT ACQUISITIONS, LLC

26. To the extent they are not inconsistent with this Count, Plaintiff incorporates the allegations in paragraphs 1-23 as if fully set forth herein.

27. By allowing Timothy Sahunich to operate their vehicle when he did not have a license, Defendant Autosport Acquisitions behaved in a willful, wanton and reckless manner.

28. As a direct and proximate result of the negligence of Defendant Autosport Acquisitions, Plaintiff suffered injuries to his right and left legs, skull, neck and back.

29. As a direct and proximate result of the negligence of Defendant Autosport Acquisitions, Plaintiff suffered past and future medical expenses and past and future pain and suffering and loss of enjoyment of life.

WHEREFORE, Plaintiff prays for judgment against the Defendant Autosport Acquisitions, LLC for punitive damages in such and amount as will serve to punish the Defendant and for his reckless, willful and wanton conduct and deter Defendant and others from similar conduct in the future, which sum is in excess of 3 million dollars (\$3,000,000.00), for his

costs expended herein, and for such other and further relief as the Court deems necessary and proper.

Respectfully Submitted,

COOK, BARKETT, PONDER & WOLZ, L.C.

By: /s/Matthew D. Glenn
Matthew D. Glenn - #53671
1610 N. Kingshighway, Suite #201
Cape Girardeau, MO 63701
Ph: 573-335-6651 Fax: 573-335-6182
Email: mglenn@cbpw-law.com

ADAM GOHN, L.C.

By: /s/Adam E. Gohn
Adam E. Gohn, #65533
P.O. Box 619
Cape Girardeau, MO. 63702
Phone: (573) 979-3183
Email: notice@adamgohn.law

Attorneys for Plaintiff




IN THE 32ND JUDICIAL CIRCUIT, PERRY COUNTY, MISSOURI

Judge or Division: BENJAMIN FREDERICK LEWIS	Case Number: 20PR-CC00029
Plaintiff/Petitioner: MARSHALL SCOTT KILBURN	Plaintiff's/Petitioner's Attorney/Address: MATTHEW GLENN COOK BARKETT PONDER & WOLZ LC P O BOX 1180 1610 N KINGSHIGHWAY, SUITE 201 CAPE GIRARDEAU, MO 63702-1180
Defendant/Respondent: AUTOSPORT ACQUISITIONS, LLC	Court Address: 15 WEST STE MARIE SUITE 2 PERRYVILLE, MO 63775
Nature of Suit: CC Pers Injury-Vehicular	

(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Except Attachment Action)

The State of Missouri to: AUTOSPORT ACQUISITIONS, LLC Alias: SERVE: REGISTERED AGENT 2333 SOUTH AVENUE LA CROSSE, WI 54601  COURT SEAL OF PERRY COUNTY	You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the plaintiff/petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action. Sept. 10, 2020 Date Further Information:	JACOB SPIRER, 2349 SOUTH AVENUE, LACROSSE WI 54601 /s/ Donna Schremp, deputy Clerk
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Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other: _____

Served at _____ (address)
 in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and sworn to before me this _____ (day) _____ (month) _____ (year).

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to officer making return on service of summons.

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each defendant/respondent. If any defendant/respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the defendant's/respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age who permanently resides with the defendant/respondent, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the defendant/respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must be made less than 10 days nor more than 30 days from the date the defendant/respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri court within 30 days after service.




IN THE 32ND JUDICIAL CIRCUIT, PERRY COUNTY, MISSOURI

Judge or Division: BENJAMIN FREDERICK LEWIS	Case Number: 20PR-CC00029
Plaintiff/Petitioner: MARSHALL SCOTT KILBURN	Plaintiff's/Petitioner's Attorney/Address: MATTHEW GLENN COOK BARKETT PONDER & WOLZ LC P O BOX 1180 1610 N KINGSHIGHWAY, SUITE 201 CAPE GIRARDEAU, MO 63702-1180
Defendant/Respondent: AUTOSPORT ACQUISITIONS, LLC	Court Address: 15 WEST STE MARIE SUITE 2 PERRYVILLE, MO 63775
Nature of Suit: CC Pers Injury-Vehicular	

(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Except Attachment Action)

The State of Missouri to: TIMOTHY M SUHANICH Alias: 10375 HARMONY SPARTA, WI 54656  COURT SEAL OF PERRY COUNTY	You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the plaintiff/petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action. <div style="display: flex; justify-content: space-between;"> <div> Sept. 10, 2020 Date </div> <div> /s/ Donna Schremp, deputy Clerk </div> </div>
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Further Information:

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other: _____

Served at _____ (address)
 in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and sworn to before me this _____ (day) _____ (month) _____ (year).

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to officer making return on service of summons.

Directions to Officer Making Return on Service of Summons

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Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age who permanently resides with the defendant/respondent, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the defendant/respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The office making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.


Service must be made less than 10 days nor more than 30 days from the date the defendant/respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri court within 30 days after service.



IN THE 32ND JUDICIAL CIRCUIT, PERRY COUNTY, MISSOURI

Judge or Division: BENJAMIN FREDERICK LEWIS	Case Number: 20PR-CC00029
Plaintiff/Petitioner: MARSHALL SCOTT KILBURN	Plaintiff's/Petitioner's Attorney/Address: MATTHEW GLENN COOK BARKETT PONDER & WOLZ LC P O BOX 1180 1610 N KINGSHIGHWAY, SUITE 201 CAPE GIRARDEAU, MO 63702-1180
Defendant/Respondent: AUTOSPORT ACQUISITIONS, LLC	Court Address: 15 WEST STE MARIE SUITE 2 PERRYVILLE, MO 63775
Nature of Suit: CC Pers Injury-Vehicular	(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Except Attachment Action)

The State of Missouri to: TIMOTHY M SUHANICH Alias: 10375 HARMONY SPARTA, WI 54656	<p>COURT SEAL OF</p>  <p>PERRY COUNTY</p>	<p>You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the plaintiff/petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.</p> <p>Sept. 10, 2020 /s/ Donna Schremp, deputy Clerk</p> <p>Further Information:</p>
---	--	--

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is Deputy Sheriff of Monroe County, WI (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
 - ☒ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with Tiffany Schanich, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent (Oldest Daughter)
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other: _____

Served at 5478 Iberia Ave. (address)
in Monroe County, WI (state), on Sept. 17, 20 (date) at 1:40pm (time).

Dep. Hoskins #14
Printed Name of Sheriff or Server

Dep. Hoskins
Signature of Sheriff or Server

Subscribed and sworn to before me this 17 (day) September (month) 2020 (year).

- I am: (check one)
- ☐ the clerk of the court of which affiant is an officer.
 - ☐ the judge of the court of which affiant is an officer.
 - ☒ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Commission Exp: 3-12-21

Terri L Harrison
Signature and Title

Service Fees
Summons \$ 75.00
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ 75.00 PO

See the following page for directions to officer making return on service of summons.

IN THE CIRCUIT COURT OF PERRY COUNTY, MISSOURI

MARSHALL KILBURN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 20PR-CC00029
)	
AUTOSPORT ACQUISITIONS, LLC,)	JURY TRIAL DEMANDED
And TIMOTHY SUHANICH,)	
)	
Defendants.)	

APPLICATION FOR CHANGE OF VENUE

AS A MATTER OF RIGHT

COMES NOW Plaintiff, by its attorneys, Cook, Barkett, Ponder & Wolz, L.C. and requests that this case transferred as a matter of right under Rule 51.03 because Perry County has less than seventy-five thousand (75,000) inhabitants. Plaintiff also requests a change of judge pursuant to the Missouri Rules of Civil Procedure.

Respectfully submitted,

COOK, BARKETT, PONDER & WOLZ, LC

By: /s/Matthew D. Glenn
 Matthew D. Glenn #53671
 1610 N. Kingshighway, Suite 201
 P.O. Box 1180
 Cape Girardeau, MO 63702-1180
 573-335-6651 - Fax: 573-335-6182
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ADAM GOHN, L.C.

By: /s/Adam E. Gohn
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Attorneys for Plaintiff